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OFFICE OF PETITIONS

In re Application of	:	
Kobayashi et al.	:	
Application No. 10/075,218	:	DECISION ON PETITION
Filed: February 14, 2002	:	
Attorney Docket No. PTO/SB/31	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 12, 2005, which is being treated as a request to withdraw the holding of abandonment for the above-identified application.

This application became abandoned for failure to timely file a proper response to the final Office action mailed October 6, 2003, which set a three-month shortened statutory period to respond. On November 17, 2003, applicants timely filed an amendment. However, by advisory action mailed on December 19, 2003, applicants were advised that the amendment had been considered, but was not deemed to place the application in condition for allowance. In the apparent absence of a timely filed response, the application was held abandoned and a Notice of Abandonment was mailed on December 16, 2004.

In the present petition, applicants state that on January 6, 2004, applicants submitted a Notice of Appeal and an authorization to charge any necessary fees with a certificate of facsimile transmission dated January 6, 2004. Applicants submitted a copy of the sending unit's report confirming transmission. On March 8, 2004, applicants submitted an appeal brief. The appeal brief was located in the official file; however, the Notice of Appeal appears to be missing.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received by the United States Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and,

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

After reviewing the papers submitted on petition, the Notice of Appeal is considered timely filed on January 6, 2004 in response to the final Office action. Accordingly, the petition is **granted**. The Notice of Abandonment is hereby vacated. The application is restored to pending status in view of the fact that a response was timely submitted on January 6, 2004.

The matter is being referred to the Technology Center Art Unit 2814.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

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